SINNIAH PILLAY

v.

PUBLIC PROSECUTOR

COURT OF APPEAL, SINGAPORE
YONG PUNG HOW CJ
CHAN SEK KEONG J
CHAO HICK TIN J
[CRIMINAL APPEAL NO. 3/88]
16 OCTOBER 1991

CRIMINAL PROCEDURE: *Conspiracy and abetment to commit grievous hurt - Whether knowledge of throwing of acid - Co-conspirators charged under different Act - Sentence - Whether should be backdated to date of remand - Accused should have been treated as if he pleaded guilty to the charge - Penal Code, ss. 325, 326.*

The appellant engaged the services of a few persons "to break a hand or a leg" of Ramasamy (victim) and to send him to hospital. The co-conspirators threw some acid on the victim, who after ten days died as a result of *septicaemia* due to inhalation of acid fumes. The appellant argued that the use of acid was not within his contemplation, that the conspiracy was only to beat up the victim and as such the charge should be reduced to s. 325 of the Penal Code. Further it was argued that the fact that the co-conspirators were charged under a different Act showed that the use of acid was not intended by the appellant.

As for sentence, the appellant argued that it was manifestly excessive as firstly, the appellant should have been treated as if he had pleaded guilty to the charge and secondly, that the sentence should be backdated to the date of remand.

Held:

[1] The Tamil idiomatic expression "must break his hand or leg" did not necessarily mean that a hand or leg must literally be broken. The expression meant hurt of a serious nature, that is, grievous hurt. The appellant had not specified the means to be adopted to cause grievous hurt. He left it entirely to the discretion of the co-conspirators. What was done by the co-conspirators was within the scope of his instructions to cause grievous hurt to the victim so that he would be sent to hospital.

[2]The fact that the appellant was charged under a different Act from that of the co-conspirators is neither here nor there. It is not unusual to find that a given set of facts can give rise to a number of different charges. It is the prerogative of the prosecution to decide which charge it would prefer.

[3] As the appellant had not made a guilty plea, the prosecution had to prove its case. Even though Counsel for the appellant limited his cross-examination to establishing that the appellant had no knowledge that formic acid would be used, the prosecution had to prove the main ingredients of the offence. Credit is given for a plea of guilty because it tends to show remorse on the part of the accused and also because it saves Court and prosecution time and expense. In putting the prosecution to prove its case, neither factor could operate in favour of the appellant.

[4] The power of the Court to back-date a sentence of imprisonment is a discretionary power. After considering all the relevant facts it could not be shown that the trial Judge had erred in not giving to the appellant a discount on the custodial sentence and not back-dating it to the date of his arrest. Having regard to the circumstances of the case, the sentence was not manifestly excessive.

[Appeal against conviction and sentence dismissed.]

Legislation referred to:
Corrosive and Explosive Substance and Offensive Weapons Act (Cap 65) [Sing], s. 4
Penal Code [Sing], ss. 109, 325, 326

For the appellant - Gilbert Gray (Nathan Isaac with him)
For the respondent - Chua Eng Hui

JUDGMENT

Chao Hick Tin J:

This was an appeal against conviction and sentence on a charge of conspiracy and abetment to commit grievous hurt under s. 326 of the Penal Code. At the conclusion of the hearing we dismissed the appeal and we now give our reasons.

The charge upon which the appellant was convicted was as follows:

> That you between December 1984 and 4 July 1985 in Singapore, did engage with Muhundan a/l K. Kumaran, one Pitchay Rasoo, one K. Gangadaran (deceased), one Vellusamy s/o Valliyappan, one Shamuganathan @ Shamuganathan a/l S. Neelakandan, one Lopez Joseph Benny, one Stephen Raja Ratnam and one Lopez Xavier Legory Benny in a conspiracy to commit grievous hurt to one Ramasamy s/o Packrisamy and in pursuance of that conspiracy and in order to the doing of that thing, an act took place on 4 July 1985 at Taman Permata, Singapore, to wit, a quantity of formic acid was splashed on the said Ramasamy s/o Packrisamy by one or more of you, which act caused severe burns to his person resulting in his death, and you have thereby abetted the commission of an offence under s. 326 of the Penal Code (Chapter 224) which act was committed in consequence of your abetment and you have thereby committed an offence punishable under s. 109 read with s. 326 of the same Code.

He was sentenced to ten years' imprisonment.

The appellant was at the time of the offence a newspaper distributor. The victim was one, P. Ramasamy, then aged sixty-four, who was the Chairman and chief executive officer of the National Cooperative Federation. Due to the injuries sustained the victim died some ten days later. The offence was committed just outside the victim's residence at no. 170, Taman Permata, off Thomson Road.

The evidence of the prosecution showed that the appellant had a brother by the name Retanasamy, who had died sometime in 1967. The appellant was appointed the co-administrator of the estate of Retanasamy. The wife of Retanasamy, one Kasiammal, was the co-administratrix of the estate. The appellant claimed to be entitled to certain business operations of Retanasamy. This led to civil litigation which resulted in the appellant's claim being dismissed by the Court and the appellant having to pay damages. In the meantime the appellant was removed as a co-administrator of the estate and Ramasamy was appointed in his stead. The appellant felt that it was Ramasamy who instigated the sister-in-law against him. Accordingly, sometime in December 1984 the appellant decided to teach the victim a lesson; he wanted revenge.

At about that time, one Raja Ratnam was supplying labourers for the newspaper distributing business of the appellant. The two of them became close friends. The appellant confided to Raja Ratnam his personal and financial problems. He told Raja Ratnam that his whole life had been made miserable by Ramasamy. Speaking in Tamil, he wanted Raja Ratnam to get people "to break a hand or a leg" of Ramasamy and to send him to hospital. The request was made in December 1984. Raja Ratnam then had an office on the third level of Coronation Plaza, which is at the junction of Bukit Timah Road and Coronation Road.

Raja Ratnam passed the request to his manager, one Lopez Joseph Benny (Lopez). Lopez first sought the help of his brother one Lopez Xavier Legory Benny (Xavier) who told Lopez to contact one Pitchay Rasoo (Rasoo), who in turn put Lopez onto another person by the name of Muhundan. Muhundan said that he could find the men to do the job. Muhundan then brought in Gangadaran, Shamuganathan and Vellusamy. We would add that the appellant was so anxious about the matter that even before Raja Ratnam could speak to Lopez, the appellant had already contacted Lopez. The appellant told Lopez that he wanted

> (Ramasamy's) one leg or one hand to be broken or hand to be taken out but whatever (they) do, he must be admitted in hospital.

On one occasion the appellant also took Raja Ratnam and Lopez in his car and showed them where Ramasamy's residence was. Eventually a sum of $5,000 was mentioned and agreed upon for the "hit" job. In March 1985, on being asked for a deposit, the appellant told Raja Ratnam to deduct a sum of $2,000 from their newspaper account. Raja Ratnam handed the money to Lopez, who in turn passed it on to the other conspirators.

Thereafter the appellant now and again asked Raja Ratnam what had been done with regard to Ramasamy. Occasionally he also enquired from Lopez. Sometime towards the end of June 1985, Vellusamy and Shamuganathan rented a car at Johor Bahru for the purpose of carrying out the job. Muhundan also asked Vellusamy and Shamuganathan to obtain acid. Vellusamy and Shamuganathan drove to Ulu Tiram, Johore, where Vellusamy bought the acid.

On 2 July 1985 sometime after 12 noon, Gangadaran, Vellusamy, Rasoo and Lopez waited at the corridor outside the office of Raja Ratnam at Coronation Plaza. A little later, the appellant came and all five of them adjourned to a nearby canteen to the same level to discuss the appellant's problem with Ramasamy. They were at the canteen talking for about an hour. It should be noted that by this time Vellusamy had already bought the acid to be used on Ramasamy.

On 4 July 1985 at about 8 a.m. Gangadaran drove the car to a spot near to where Ramasamy lived, and Vellusamy got down from it. At about 10.07 a.m. when Ramasamy came out from his residence, Vellusamy threw the acid at him. Ten days later, Ramasamy died. The Senior Forensic Pathologist, Professor Chao Tzee Cheng certified the cause of death as "septicaemia due to inhalation of acid fumes." In his opinion, Ramasamy died as a result of the acid thrown on him.

News of the acid attack was reported on the same day in the afternoon English newspaper, the *New Nation*. That same afternoon the appellant saw Lopez and five others (Rasoo, Muhundan, Vellusamy, Gangadaran and Xavier) who were involved in the conspiracy. On the morning of 5 July 1985, Raja Ratnam saw the appellant in the latter's office on some business matters and also told him that the persons involved would be coming to get payment from him. The appellant asked Raja Ratnam to deduct the remaining $3,000 from their mutual account. But Raja Ratnam refused saying:

> Nothing doing. This is something very serious, I don't want to get involved in this. Don't involve me. You go and deal with them and pay the money to them.

That same afternoon the appellant came to Raja Ratnam's office. Also present were Lopez, Xavier, Rasoo and Shamuganathan. The appellant placed two or three bundles of $50 notes on Raja Ratnam's table in payment of the job done. Raja Ratnam told the appellant to take the money away saying it was evil money. The group then left Raja Ratnam's office and went to the canteen where the appellant paid those people. Subsequently those people demanded more money and the appellant also paid them.

Of the persons involved in the crime, Gangadaran died while in remand. Vellusamy, Muhundan, Rasoo and Shamuganathan pleaded guilty to a charge of abetment and conspiracy to commit an offence under s. 4 of the Corrosive and Explosive Substance and Offensive Weapons Act (Cap. 65) and they were sentenced to eight years imprisonment and eight strokes of the cane, ten years and eight strokes, eight years and eight strokes, and six years and six strokes respectively. However, in the case of Raja Ratnam, Lopez and Xavier, they were not charged in Court but were detained by the authorities under the Criminal Law (Temporary Provisions) Act.

One of the witnesses for the prosecution was Raja Ratnam. While admitting that he did procure the services of others to injure Ramasamy, he denied that the use of acid was ever mentioned. He said he was shocked when he heard that acid was used on Ramasamy. He also said that the appellant was similarly shocked. But he agreed that the Tamil idiomatic expression "must break his hand or leg" meant to cause hurt. It would be serious hurt. It need not literally mean breaking a hand or a leg. It could also mean some other kind of harm. He also agreed that the expression, however, had nothing to do with the means by which grievous hurt would be caused.

The second witness for the prosecution was Lopez whose evidence differed from that of Raja Ratnam in two material respects. According to Raja Ratnam, the appellant knew of the acid attack only on 5 July 1985. But according to the evidence of Lopez the appellant knew of the acid attack on 4 July 1985. This was because in the afternoon of that very day the appellant met Rasoo, Vellusamy, Shamuganathan, Muhundan, Xavier and Lopez at Coronation Plaza. Xavier, the third prosecution witness, also confirmed that the appellant was there on 4 July 1985.

The second area where Lopez's evidence differed from that of Raja Ratnam's related to the reaction of the appellant when the appellant was told of the acid attack on Ramasamy. The evidence of Lopez on this aspect was as follows:

> Q: What was Sinniah Pillai's reaction?
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> A: Because Sinniah Pillai, he is not sad about it, he is not worried about it. May be he is a bit happy because the job had been carried out.
>
> Q: Yes, how did you get that impression?
>
> A: Look at his face.

At the close of the prosecution's case at the trial, Counsel for the appellant, Mr. Gray, submitted that there was no case to meet on the charge. While Mr. Gray conceded that the prosecution had established that the appellant was a party to the conspiracy to commit grievous hurt to Ramasamy, an offence under s. 325, he contended that the evidence did not show that the appellant was guilty of a charge under s. 326. He submitted that there was no evidence that the appellant wanted acid to be thrown on Ramasamy. He said there was no proof whatsoever that the conspiracy involved the use of acid. The learned trial Judge rejected the submission and called upon the appellant to enter upon his defence. He chose to remain silent and was accordingly convicted of the charge and sentenced to a term of imprisonment of ten years.

Section 325 of the Penal Code provides that:

> whosoever voluntarily causes grievous hurt shall be punished with imprisonment for a term which may extend to 7 years ...

Section 326 provides that:

> whosoever ... voluntarily causes grievous hurt ... by means of any poison or any corrosive substance ... shall be punished with imprisonment for life or with imprisonment for a term which may extend to 10 years and shall also be liable to fine or to caning.

On the hearing of the appeal, very much the same arguments were canvassed before us. Counsel for the appellant submitted that the distinction between s. 325 (which carries a lighter sentence) and s. 326 (which carries a heavier sentence) is that the accused must have specific knowledge of the means whereby grievous hurt is caused. Accordingly, he submitted that it was wrong for the trial Judge to have convicted the appellant of the charge under s. 326 since the appellant was unaware for the method to be employed by those people whom he had engaged to cause grievous hurt and he had no intention of causing grievous hurt to Ramasamy by the use of acid.

In further elaboration, Mr. Gray submitted that what the appellant had engaged the people to do was to inflict some traumatic bodily injury to Ramasamy. Splashing of acid on Ramasamy was never contemplated by the appellant. The idiomatic Tamil expression could not be extended to cover the use of acid. Mr. Gray relied heavily on the evidence of Raja Ratnam who said that it was not within contemplation that acid should be thrown at the victim; the conspiracy was only to beat up the victim. He contended that the learned trial Judge was wrong to have said that it was inconceivable that the assailants would not have told the appellant that grievous hurt was to be caused by acid. He asserted that the statement was not supported by the evidence and accordingly that the conviction was against the weight of the evidence.

Mr. Gray also pointed out that it was significant that the appellant was not charged under the same Act as the other persons involved in the conspiracy. This could only mean that the appellant did not realize that acid was to be used.

We will first refer to what the learned trial Judge found on the critical question of whether the appellant knew of or connived in the use of acid. This was what he said:

> Lastly, at the close of the prosecution case there was, in my view, sufficient evidence which was not inherently incredible that Sinniah Pillai knew or would have known that the assailants would use acid to cause grievous hurt to Ramasamy. There was the evidence that on 2 July Sinniah Pillai was in the canteen with Gangadaran, Vellusamy, Rasoo and Lopez for about an hour. Raja Ratnam said that they were discussing Sinniah Pillai's problem. On this evidence, it seemed to me inconceivable that the assailants would not have told Sinniah Pillai that grievous hurt was to be caused to Ramasamy by the use of acid. It was all the more so since Vellusamy had already bought the acid in Johor. I was fortified in the view I took because there was the further evidence that after the incident, in the afternoon of 4 July, Sinniah Pillai did nothing to dissociate himself from the deed perpetrated by the assailants. There was no disavowal by him. Instead, on being satisfied that the assailants had caused grievous hurt to Ramasamy, he paid them for it. And when they wanted more money, he obliged them.

We were unable to accept the submission of Mr. Gray that there was no basis for the learned trial Judge to have found that the appellant "knew or would have known that the assailants would use acid to cause grievous hurt to Ramasamy." It was reasonable for the learned trial Judge to have drawn the inference that the appellant knew that acid would be used. In addition, we would refer to the evidence of Lopez, which we have quoted above, in which he described the reaction of the appellant when the latter heard that acid was used on Ramasamy; Lopez said that he had the impression that the reaction of the appellant was that of a person who was pleased that the job had been done. In this regard we noted that there

was the conflicting evidence of Raja Ratnam who said that when he told the appellant on 5 July 1985 that acid had been thrown on Ramasamy, the appellant was surprised that acid was used and was depressed. But here it must be recalled that the incident was reported in the afternoon newspaper on 4 July 1985. The appellant was also told on the same day. We are of the view that the seriousness of what he had caused to Ramasamy had slowly dawned on him overnight. His behaviour on 5 July 1985 was consistent with his having such knowledge. We would observe that Raja Ratnam was not really concerned with the implementation of the conspiracy. He left that to the people whom Lopez had engaged. Thus he did not even join them at the discussion which the appellant had with those people on 2 July 1985 at the canteen. Considering all the circumstances we were satisfied that the trial Judge was not wrong in finding that the appellant had prior knowledge and connived in the use of the acid.

In any case, the evidence clearly pointed to the fact that what the appellant wanted done to Ramasamy was that he was to be injured to such an extent that he would be sent to hospital. As explained by Raja Ratnam, the Tamil idiomatic expression "must break his hand or leg" did not necessarily mean that a hand or leg must, literally, be broken. The expression meant hurt of a serious nature, that is, grievous hurt. The appellant had not specified the means to be adopted to cause the grievous hurt. He left it entirely to the discretion of the co-conspirators. What was done by the co-conspirators was within the scope of his instructions to cause grievous hurt to Ramasamy so that he would be sent to hospital.

The fact that the appellant was charged under a different Act from that of the co-conspirators is neither here nor there. It is nothing unusual to find that a given set of facts can give rise to a number of different charges. It is the prerogative of the prosecution to decide which charge it would prefer.

For all these reasons, we are satisfied that the appellant was properly convicted under s. 326 of the Penal Code.

Turning to the question of sentence, Counsel for the appellant contended that the sentence was manifestly excessive. He made two points in support of his contention: First, the appellant should have been treated as if he had pleaded guilty to the charge, and therefore an appropriate discount on the sentence should have been given to him. He submitted that the appellant had not really challenged the evidence adduced by the prosecution, and that as he was prepared to admit to a charge under s. 325, the trial was in effect to determine a point of law as to whether his acts as proved fell within the terms of s. 326. Counsel said that he was entitled to rely on any legal defence. Second, the trial Judge was wrong in not back-dating the sentence to the date of the appellant's remand, with the result that he had to serve almost another 3 years of imprisonment. Counsel said that the appellant's age and health should have been taken into account. He further argued that the first reason should also have been taken into account for the purpose of back-dating.

We were unable to accept the argument that the appellant ought to have been treated as if he had pleaded guilty. The fact was he pleaded not guilty, as a result of which the prosecution had to prove its case. Even though Counsel for the appellant limited his cross-examination to establishing that the appellant had no knowledge that formic acid would be used, the prosecution was in fact put to prove the main ingredients of the offence. Credit is given for a plea of guilty because it tends to show remorse on the part of the accused and also because it saves Court and prosecution time and expense. In putting the prosecution to proof of its case, neither factor could operate in favour of the appellant.

With reference to the second argument, the power of the Court to back-date a sentence of imprisonment is a discretionary power. The trial Judge decided not to back-date the custodial sentence of the appellant in this case. All the relevant facts were before the trial Judge. The maximum sentence for the offence was life imprisonment and caning. The appellant was sentenced to 10 years' imprisonment. He escaped caning because he was then sixty-two years of age. His fellow conspirators had pleaded guilty and were sentenced to between 6 to 10 years' imprisonment and were given 6 to 8 strokes of the cane. Their sentences were not back-dated. The offence was a heinous one. Throwing formic acid on a person is a particularly vicious and painful way to injure him. In this case, the victim died.

In the circumstances, it could not be shown that the trial Judge had erred in not giving to the appellant a discount on the custodial sentence and not back-dating it to the date of his arrest. Nor were we satisfied that the sentence without taking into account the back-dating was manifestly excessive, having regard to the circumstances of the case.

The appeal against conviction and sentence was accordingly dismissed.

Also found at [1992] 1 CLJ 241